



May 6, 2020

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VIA ECF

Magistrate Judge Vera M. Scanlon
United States District Court
Eastern District of New York
225 Cadman Plaza East, 1214 South
Courtroom 13A—South Wing
Brooklyn, NY 11201

Re: *Monadnock Construction, Inc. v. Westchester Fire Ins. Co./Westchester Fire Ins. Co. v. Glasswall, LLC, et al.*, Case No.: 1-16-cv-00420-JBW-VMS

Dear Judge Scanlon:

We represent Westchester Fire Insurance Company and respond to Glasswall, LLC's update on its motion to compel (Dkt # 163) and Westchester's opposition (Dkt # 165).

Locale of Depositions. The Parties agreed to the deposition of Westchester in Philadelphia in exchange for depositions of Glasswall, Ugo Colombo and Sara Jayne Kennedy Colombo in Miami by May 29, 2020. Since then, however, Glasswall and the Colombos have not proposed dates for their depositions. On April 29, Westchester proposed video conference depositions given current health crisis restrictions but has received no response.

Retainer Agreement. Westchester has maintained that production of a retention letter is burdensome given the length and complexity of its relationship with counsel and is duplicative make-work given the vast information that Westchester has already produced. Since then, Westchester testified for more than 10 pages on its counsel retention, including the selection process, discounted rate negotiations, the billing system, challenges to invoices, and more. In addition to Westchester's previous arguments, Glasswall's request is simply moot.

Attorney Time Records. Westchester has presented decisions from courts in the Second Circuit holding that seeking indemnification of fees does not waive privilege, noting that Glasswall never identified even one problematic privilege redaction. Since then, Glasswall's counsel questioned Westchester on only eight words in one time entry, asking no questions about redactions. This further underscores Glasswall's failure to identify to Westchester or the Court redactions that leave it unable to understand work performed.

We thank the Court for the opportunity to submit an update on this matter.

Respectfully Submitted,

COZEN O'CONNOR

By: s/ John J. Sullivan